

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0469P

**Use Tax
For Calendar Year 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar year 1998. Upon audit it was discovered that the taxpayer failed to remit use tax on approximately eighty percent (80%) of its non-taxed taxable purchases.

Taxpayer requests abatement of the penalty because it did not purposely avoid paying tax on the invoices shown in the audit.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it is a growing company that has had considerable changes to its Indiana operations over the past few years. In addition, these changes as well as the tax law changes have made it difficult to determine with complete accuracy the taxability of each transaction.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each

taxpayer.”

Taxpayer failed to remit use tax due on clearly taxable items, was previously audited, has not installed a use tax system, made estimated use tax payments, and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.